United States Department of Labor
Employees' Compensation Appeals Board

T.G., Appellant	)	
and	)	**Docket No. 06-1411**
	)	**Issued: November 28, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Lincoln, NE, Employer	)	

Appearances:
Michael Davidson, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 13, 2006 appellant, though his representative, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated March 22, 2006 denying his claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty.

FACTUAL HISTORY

On January 13, 2006 appellant, then a 56-year-old mail carrier, filed an occupational disease claim alleging that he sustained stress due to an "emotional encounter" with his supervisor. He noted that the conflict was ongoing. Appellant stopped work on January 13,

2006 and returned to his usual duties on January 18, 2006. On the claim form, Todd Case, a supervisor, indicated that the Office had recently denied another emotional condition claim filed by appellant, assigned file number 112030359.

In a statement dated January 12, 2006, Pat Gross related that appellant experienced unsteadiness and dizziness while delivering mail to her house. She offered to call for emergency assistance but he left her house of his own accord after a few minutes.

On January 30, 2006 the Office requested additional information from appellant and the employing establishment regarding his claim. In a statement dated January 22, 2006, Michael Davidson, a union representative, related that on January 7, 2006 Tami Adams, appellant's supervisor, informed him that appellant had again left his truck unlocked and that she intended to issue a letter of warning. Mr. Davidson told appellant about the forthcoming letter of warning. Appellant attributed forgetting to lock truck to medication. Mr. Davidson stated:

> "On January 12, [2006] [appellant] left a note for me to call him at home. I returned his call on Friday January 13th[;] he informed me that he had a dizzy spell on his route on the 12th. [Appellant] said he was waiting to get into his doctor so he could see what went wrong. He was going to get a CAT [computerized axial tomography] scan done to see if he had a minor stroke. He said he would not be in on Saturday the 14th. [Appellant] had already left a sick leave notice with management that had a question mark as the return date."[1]

Mr. Davidson told Ms. Adams that appellant would not be at work on January 14, 2006. When he did not come to work on that date, Ms. Adams told Mr. Davidson that he was absent without leave (AWOL). Appellant returned to work on January 18, 2006 after scheduled days off and signed an AWOL slip for Mr. Case. Mr. Davidson informed Mr. Case of the circumstances surrounding appellant's absence on January 14, 2006 and Mr. Case changed the AWOL slip to sick leave. Appellant told Mr. Davidson that he did not want Ms. Adams to speak with him and would take sick leave if his route was under eight hours. Mr. Davidson stated: "[M]anagement still contends they have a right to see how [appellant's] route is going to be everyday, which [he] feels puts unneeded stress on him."

In a statement dated January 29, 2006, appellant related that on November 28, 2005 his tooth became very painful. On his break he used the station manager's telephone to call for an emergency dental appointment. Ms. Adams screamed at him and asked whether he had permission to use the telephone. Appellant related:

> "It was bad enough that the Station Manager [Mr. Case] came out of his office to get her off of me. They both went over to the middle of the workroom to her desk. I went over to the Station Manager and asked him if it was true that we had

[1] Appellant submitted an evaluation by a cardiologist dated August 8, 2005 a report of his cardiac catheterization on August 12, 2005 and medical reports documenting his treatment for atrial fibrillation from September 2005 to January 2006. He had a computerized tomography (CT) scan performed on January 17, 2006.

> to ask to use the [tele]phone. He said yes. A fellow carrier, Tammy Wheeler[,] was walking by. I asked her if she knew of this rule. She said no to the Station Manager."

Appellant related that the dentist removed his tooth later that day. He told the Station Manager that it would be better if he did not speak with Ms. Adams. Appellant experienced chest pain, dizziness, sweating and difficulty breathing on January 12, 2006 and noted that his physicians believed his condition was serious. Appellant attributed his condition to stress caused by Ms. Adams and filed a grievance against her for harassment on January 27, 2006. He related that he was "still able to do a great job on [his] route."

In a statement received on February 13, 2006, appellant again attributed his stress-related condition to verbal abuse by Ms. Adams. He again noted that she yelled at him on November 28, 2005 for using the telephone. Appellant contended that the information management received on the amount of letter mail sorted by machine was inflated to get more work out of employees. He noted that even given his age management "still try to push these higher figure on me from their computer print out" to make the "station figures look good…." Appellant reiterated that he was "more than capable of doing [his] job if management would leave [him] alone."

In a statement dated January 25, 2006, Ms. Adams asserted that she found the door to appellant's work truck unlocked on January 7, 2006. She told Mr. Davidson that she intended to discipline appellant but did not speak to him directly. Ms. Adams related that on January 12, 2006 appellant gave Mr. Case, the station manager, a note from a customer but did not otherwise report health problems. Appellant requested leave starting on January 13, 2006 for a stress test and put a question mark for the return date. Ms. Adams found the leave slip on her desk on January 14, 2006. When appellant did not arrive at work on that date she found him AWOL.

Mr. Case, in an undated statement received by the Office on February 27, 2006, denied instructing Ms. Adams not to speak to appellant but noted that she generally tried to avoid speaking with him unless necessary. He denied that management harassed appellant. Mr. Case noted that the incident between Ms. Adams and appellant regarding use of the telephone occurred on a different date than November 28, 2006. He did not hear the conversation and noted that Ms. Adams denied yelling at appellant. Mr. Case related:

> "[Ms. Adams] talked to me personally after the incident occurred and told me that she found [appellant] in my office using my [tele]phone and asked him if he had asked permission to use the [tele]phone. (My office is used minimally by the clerks and is not generally used by employees. There is a [tele]phone available in the workroom for employees to use when at break.) She told him that in the future that if he wanted to use the [tele]phone he should ask first and it should be done when at break. This made [appellant] extremely angry."

Mr. Case later told appellant that Ms. Adams correctly informed him that he could not use the telephone without permission. A coworker passing by was also unaware of the need to ask permission to use the telephone so he made an announcement later to all employees. Mr. Case expressed concern that something was wrong with appellant and noted that he

frequently forgot to lock his vehicle and became upset easily. He denied that appellant was forced to take leave due to a workload projection for the day. A carrier under time with his route for the day could take leave or help on another route. Mr. Case stated: "I can comfortably state that I have not had any altercations with [appellant]. [He] really does a fine job on his route and rarely do we question his assessment." Mr. Case noted that neither appellant nor Mr. Davidson had informed management that appellant would not be at work on January 14, 2006. He changed appellant's status from AWOL to sick leave after talking with Mr. Davidson.

On March 14, 2006 appellant submitted a statement dated November 10, 2005 from a coworker, Tom Sedoris. He described verbal and physical altercations between himself and Ms. Adams.

In an undated statement received on March 14, 2006, appellant related that October 13, 2005 was the date of his altercation with Ms. Adams and his initial dental appointment. He provided the name of a witness to the conversation. Appellant maintained that Ms. Adams harassed him by telling him not to use the telephone without permission because no one in the office was aware of the rule. He attributed his periodic failure to lock his truck to stress.[2]

By decision dated March 22, 2006, the Office determined that appellant had not established that he sustained a stress-related condition in the performance of duty. The Office found that he did not establish any compensable employment factors.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.[3] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.[4]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under the Act.[5] However, the Board has held that where the evidence establishes error or abuse on the part of the employing

[2] Appellant submitted an additional medical report.

[3] 5 U.S.C. § 8101-8193; *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[4] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[5] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990); *reaff'd on recon.*, 42 ECAB 556 (1991).

establishment in what would otherwise be an administrative matter, coverage will be afforded.[6] In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[7]

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.[8] A claimant must establish a factual basis for his or her allegations with probative and reliable evidence. Grievances and Equal Employment Opportunity complaints, by themselves, do not establish that workplace harassment or unfair treatment occurred.[9] The issue is whether the claimant has submitted sufficient evidence under the Act to establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.[10] The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[11]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[12] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[13]

[6] *See William H. Fortner*, 49 ECAB 324 (1998).

[7] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[8] *See Michael Ewanichak*, 48 ECAB 364 (1997).

[9] *See Charles D. Edwards*, 55 ECAB 258 (2004); *Parley A. Clement*, 48 ECAB 302 (1997).

[10] *See James E. Norris*, 52 ECAB 93 (2000).

[11] *Beverly R. Jones*, 55 ECAB 411 (2004).

[12] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[13] *Id.*

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of employment incidents. The Office denied his emotional condition claim on the grounds that he did not establish any compensable employment factors. The Board must, therefore, initially review whether these alleged incidents are covered employment factors under the Act.

Appellant has not alleged that he developed an emotional condition due to the performance of his regular or specially assigned duties or out of a specific requirement imposed by his employment. He contended that the amount of mail sorted by machines was inflated so employees would work harder and that even given his age management "tried to push the higher figures" on him. Appellant maintained, however, that he did a "great job on his route" and was "more than capable of doing [his] job" if management stopped intervening. Mr. Case confirmed that appellant did "a fine job on his route." Appellant, thus, has not attributed his condition to the performance of his regular or specially assigned duties under *Cutler*.

Appellant attributed his stress, in part, to verbal abuse by Ms. Adams. He related that on October 13, 2005, Ms. Adams yelled at him because he used Mr. Case's telephone to call a dentist. The Board has held that verbal altercations, when sufficiently detailed by the claimant and supported by the evidence, may constitute compensable employment factors.[14] This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.[15] Mr. Case noted that he spoke with Ms. Adams after the incident and she indicated that she had asked appellant whether he had permission to be in the Office to use the telephone. She denied yelling at appellant but instead told him that he had to ask permission to use the telephone and he became angry. Appellant has not submitted any factual evidence, such as witness statements, substantiating his allegation of verbal abuse by Ms. Adams. Additionally, the Board has generally held that being spoken to in a raised or harsh voice does not of itself constitute verbal abuse or harassment.[16] Appellant, consequently, has not established that Ms. Adams verbally abused him on October 13, 2005.

Regarding appellant's allegations of harassment by Ms. Adams, the Board has held that to the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisor and coworkers are established as occurring and arising from the employee's performance of his regular duties, these could constitute employment factors.[17] The evidence, however, must establish that the incidents of harassment or discrimination occurred as alleged to give rise to a compensable disability under the Act.[18] Appellant maintained that Ms. Adams harassed him by instructing him not to use the telephone without permission on October 13, 2005 as no other employee was aware of such a rule. Mr. Case noted that a coworker who passed by

[14] *Janet D. Yates*, 49 ECAB 240 (1997).

[15] *Christophe Jolicoeur*, 49 ECAB 553 (1998).

[16] *Beverly R. Jones*, *supra* note 11.

[17] *Janice I. Moore*, 53 ECAB 777 (2002).

[18] *Id*.

on October 13, 2005 was also unaware of the rule against using the telephone in his Office without permission. He announced the rule later to all the employees. Appellant has not shown that he was harassed or discriminated against by being informed to request permission to use Mr. Cases's telephone or by other actions take by Ms. Adams. He submitted a statement dated November 10, 2005 from Mr. Sedoris, who described altercations that he had with Ms. Adams. Mr. Sedoris' statement, however, is not specific to the allegations raised by appellant and thus is insufficient to demonstrate harassment by Ms. Adams toward him. Generally, complaints about the manner in which a supervisor performs her duties or the manner in which a supervisor exercises his discretion fall, as a rule, outside the scope of coverage provided by the Act.[19] This principle recognizes that a supervisor or manager in general must be allowed to perform his duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.[20] The actions taken by Ms. Adams in instructing appellant to request permission before using Mr. Case's telephone were within her authority as a supervisor and, absent a finding of error or abuse, are not compensable. As appellant has not submitted any evidence establishing error or abuse by Ms. Adams, he has not established a compensable employment factor.

Regarding Ms. Adams placing appellant AWOL on January 14, 2006, the Board has held that actions of the employing establishment in matters involving the use of leave are generally not considered compensable factors of employment as they are administrative functions of the employer and not duties of the employee.[21] Approving or denying a leave request is an administrative function of a supervisor.[22] An administrative or personnel matter will be considered to be an employment factor where the evidence discloses evidence of error or abuse.[23] In this case, appellant put a leave slip on Ms. Adams desk requesting leave on January 13, 2006 and putting a question mark on the return date. Mr. Davidson told Ms. Adams that he would not be at work on January 14, 2006 and she found him AWOL. Mr. Case changed the AWOL to sick leave after Mr. Davidson explained that appellant experienced a dizzy spell on his route on January 12, 2006 and was going to have a CT scan performed to rule out a stroke. The mere fact that the charge of AWOL was subsequently changed to sick leave does not, of itself, establish error or abuse.[24] Appellant has not submitted evidence showing error or abuse by the employing establishment regarding his leave requests and, therefore, has not established a compensable employment factor.

[19] *See Marguerite J. Toland*, 52 ECAB 294 (2001).

[20] *Id*.

[21] *Judy L. Kahn*, 53 ECAB 321 (2002).

[22] *Beverly R. Jones*, *supra* note 11.

[23] *Lori A. Facey*, 55 ECAB 217 (2004).

[24] *Dennis J. Balogh*, *supra* note 12.

As appellant failed to establish any compensable factors of employment, the Office properly denied his claim.[25]

CONCLUSION

The Board finds that appellant has not established that he sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 22, 2006 is affirmed.

Issued: November 28, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[25] As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Hasty P. Foreman*, 54 ECAB 427 (2003).